IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15823 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D.B. JETHAWA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15823 of 2003

MR JAYANT P BHATT for the Petitioner

MR MS RAO, AGP for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 23/06/2004

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today. Learned AGP Mr.Rao waives

service of rule.

Feeling aggrieved by the supersession in the matter of promotion to the post of Joint Director of Agriculture the petitioner, a Deputy Director of Agriculture, has preferred the present petition.

It is the claim of the petitioner that six of his juniors have been promoted as Joint Director of Agriculture as far back as in the month of December, 2000. However, the petitioner has been denied the said benefit on erroneous seniority assigned to the petitioner.

It is admitted that in the cadre of Deputy Director of Agriculture the petitioner was promoted earlier to the aforesaid six persons i.e. on the principle of continuous officiation the petitioner is senior to the aforesaid six persons. Nevertheless, since the petitioner had been promoted as Deputy Director of Agriculture on a Roster point as a reserved category officer he was not given seniority over those of the Deputy Directors who were promoted as such later than the petitioner but who were senior to the petitioner in the lower cadre of Assistant Director of Agriculture. It is also admitted that the petitioner's seniority is now restored by Resolution dated 22nd January, 2003. It is also stated that the petitioner's case for promotion is under consideration.

This is one litigation which could have been avoided. First; on the principle of continuous officiation the petitioner being senior in the cadre of Deputy Director of Agriculture, he could not have been considered junior to those officers who were promoted later. Second; the Government, having realised its mistake and having rectified the same as far back as on 22nd January, 2003, has not considered the case of the petitioner for promotion as Deputy Director of Agriculture till the date. Mere assurance given on affidavit is not sufficient.

In the aforesaid circumstances, the respondents are directed to consider the case of the petitioner for further promotion to the post of Joint Director of Agriculture within four weeks from today. The respondents shall consider promotion of the petitioner as on December, 2000. If he is not found suitable, his suitability on any subsequent date should be considered. The petitioner should be given promotion as Joint Director of Agriculture from the date he is found

suitable on the available vacancy. He shall also be given suitable seniority in the cadre of Joint Director of Agriculture and difference of pay and allowances as may be admissible in the cadre of Joint Director of Agriculture. The decision shall be communicated to the petitioner forthwith. The respondents shall report the compliance of this order by 9th August, 2004.

Petition is allowed in the above terms. Rule is made absolute with cost.

(Ms. R.M.Doshit, J.)

/sakkaf